

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARRI WILLIAMS,

Petitioner,

v.

JO WOFFORD,

Respondent.

Case No. C20-1477-RSL

ORDER DISMISSING
FEDERAL HABEAS
ACTION

The Court, having carefully reviewed petitioner Carri Williams' petition for writ of habeas corpus, respondent Jo Wofford's answer to the petition, petitioner's response to respondent's answer, respondent's reply, the lengthy and detailed Report and Recommendation of United States Magistrate Judge Michelle L. Peterson, petitioner's objections thereto, respondent's response to petitioner's objections, and the remainder of the record, hereby finds and ORDERS:

(1) The Report and Recommendation (Dkt. # 29) is ADOPTED as MODIFIED by this Order. The Court agrees with Judge Peterson and commends her for the thorough consideration she gave this difficult case.

(2) Petitioner's petition for writ of habeas corpus (Dkt. #1) is DENIED, and this action is DISMISSED with prejudice.

(3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a certificate of appealability is GRANTED IN PART:

ORDER DISMISSING FEDERAL
HABEAS ACTION - 1

1 (a) *Ground One – Right to Present a Defense:* A certificate of appealability is
 2 DENIED. The Ninth Circuit’s opinion in Moses v. Payne, 555 F.3d 742 (9th Cir. 2009), further
 3 forecloses petitioner’s argument on this issue. In that case, the Ninth Circuit explained:

4 [T]he Supreme Court’s cases have focused only on whether an evidentiary
 5 rule, by its own terms, violated a defendant’s right to present evidence.
 6 These cases do not squarely address whether a court’s exercise of discretion
 7 to exclude expert testimony violates a criminal defendant’s constitutional
 8 right to present relevant evidence . . . Nor do they clearly establish “a
 9 controlling legal standard” for evaluating discretionary decisions to exclude
 the kind of evidence at issue here.

10 Moses, 555 F.3d at 758-59 (citing Wright v. Van Patten, 552 U.S. 120, 124-25 (2008); Panetti v.
 11 Quarterman, 551 U.S. 930, 952-53 (2007)). This reasoning applies here.

12 (b) *Grounds Five and Six – Constitutionality of the Homicide by Abuse Statute:*
 13 As to petitioner’s as-applied challenge, a certificate of appealability is DENIED. As to
 14 petitioner’s facial challenge, a certificate of appealability is GRANTED. The Court agrees with
 15 Judge Peterson that Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc., 455 U.S. 489 (1982),
 16 instructs analysis of petitioner’s facial challenge as an as-applied challenge because the statute at
 17 issue does not regulate First Amendment conduct. However, the Court recognizes that the state
 18 of the law is murky following the Supreme Court’s decision in Johnson v. United States, 576
 19 U.S. 591 (2015), and concludes that jurists of reason could disagree with the resolution of this
 20 constitutional claim. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

21 (c) As to all other issues, a certificate of appealability is DENIED.

22 (4) The Clerk is directed to send copies of this Order to all counsel of record and to
 23 the Honorable Michelle L. Peterson.

24 DATED this 11th day of July, 2022.

25
 26 

27 Robert S. Lasnik
 28 United States District Judge